Filed 7/30/09 (Original published opn. filed 6/30/09; *this supp. opn. is not certified for publication* and may not be cited or relied on under Cal. Rules of Court, rule 1115. Because it modifies an otherwise published opinion, this supp. opn. has been posted with the published opinions to facilitate tracking subsequent history of the 6/30/09 opn.)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

YUKI KOBAYASHI, Petitioner, v. THE SUPERIOR COURT OF ORANGE COUNTY, Respondent; DOUGLAS HAN, Real Party in Interest.	G042173 (Super. Ct. No. 30-2009-00122583) SUPPLEMENTAL OPINION ON DENIAL OF REHEARING

Original proceedings in the Court of Appeal for the State of California; motion to vacate opinion treated as petition for rehearing. Petition denied.

Yuki Kobayashi in pro per., for Petitioner.

No appearance for Respondent.

No appearance for Real Party in Interest.

* * *

Yuki Kobayashi has filed a motion to vacate our opinion filed June 30, 2009, and a request to enter a "different opinion." In substance, his motion is a petition for rehearing. We treat it as such, and now explain why we deny rehearing.

Our June 30 opinion dealt with the problem of sorting out someone who has the misfortune to have the same name as someone else declared to be a vexatious litigant. We covered the topic under the rubric of "mistaken identity." In doing so, we gave Kobayashi the *benefit* of the doubt. When we read his original petition, we thought that maybe, just maybe, this Yuki Kobayashi was claiming not to be the same Yuki Kobayashi who had been declared a vexatious litigant in Los Angeles Superior Court, case number BC170895 (case BC170895). After all, he did say: "I have never been determined to be a vexatious litigant."

Accordingly, this court obtained the records from the Judicial Council regarding the determination of Yuki Kobayashi as a vexatious litigant. When the addresses matched up, we were able to come to a firm conclusion that this Yuki Kobayashi really was the Yuki Kobayashi declared to be vexatious in case BC170895.

And, in his current petition for rehearing, Kobayashi tells us as much. Kobayashi says nothing to disavow his identity. In fact, he takes great pains to assert that our characterization of his argument as one of mistaken identity was incorrect. The language in his earlier application that we had said was susceptible of mistaken identity (specifically, "I have never been determined to be a vexatious litigant") he now asserts was mere legal argument, a form of opinion.

Kobayashi's real argument, as presented in his current petition, is that he is not a "true" vexatious litigant because the Judicial Council "erroneously listed his name in the absence of an effective court order." That is, he seeks to reopen a matter long decided. But Kobayashi's remedy for any legally substantive error in the listing of his name with the Judicial Council by the trial court in BC170895 was to *timely* challenge the order listing his name in the Court of Appeal. And the time for that expired almost a decade ago. The validity of the order listing him as a vexatious litigant is now res judicata and cannot be reopened.

Accordingly, the petition for rehearing is DENIED.

SILLS, P. J.

WE CONCUR:

RYLAARSDAM, J.

MOORE, J.